

APPELLATE CIVIL

Before Harbans Singh, C.J. and S. S. Sandhawalia, J.

DR. HARKISHAN SINGH AND ANOTHER,—Petitioners.

versus

PUNJAB STATE AND ANOTHER,—Respondents.

Letters Patent Appeal No. 288 of 1968

August 13, 1969.

Punjab Civil Medical Service, Class I (Recruitment and Conditions of Service) Rules, 1940—Rules 5, 9(2) and 9(3)—Direct appointment to the selection grade—Whether violative of rule 9(2)—Conditions of service of Government employees not covered by any legislative enactment or statutory rules—Such conditions—Whether can be regulated by administrative instructions.

Held, that direct appointment to the selection grade in the Punjab Medical Class I Service is not violative of rule 9(2) of the Punjab Civil Medical Service, Class I (Recruitment and Conditions of Service) Rules, 1940. In the said sub-rule the word 'only' does not exist before the expression 'members of service'. To import this word into the rule, would be doing violence to its language. Rule 9(2) of the Rules is an enabling provision making the members of the service also eligible for the selection grade of pay under the provisions of rule 9. It is neither exhaustive nor it can be read by implication to exclude the eligibility of a fit and deserving person for being considered directly for appointment to the selection grade. To construe rule 9(2) as exclusionary would be straining without any justification the plain meaning of its words. Moreover, a close reading of rule 9(3) of the Rules indicates that recruitment to the selection grade is by "appointment". Such appointment to the service by rule 5 is permitted by both direct recruitment as well as by promotion. Appointment to the selection grade is by a process of selection and the members of the service also are not entitled as of right to appointment to this grade. Selection, therefore, would obviously include selection by either mode, that is from the pre-existing members of the service as also by selection through the Public Service Commission from outsiders as provided for in rule 3 which lays down that an appointment to the service shall be made by Government on the advice of the Commission from time to time as required. If this were not so, selection grade posts would have to be kept vacant if no one in the time-scale is outstanding or deserving to be promoted to these posts. A bar of direct recruitment to the selection grade would preclude from attracting a person of however outstanding ability and merit by an offer of appointment directly to the selection grade. The argument that only pre-existing members of the service alone can be appointed to any of the selection grade posts in Class I service is fallacious.

(Paras 9, 10 and 12).

Held, that it is within the competence of the State Legislature to enact laws governing the conditions of the service of its employees. However, till the enactment of such a law and in so far as no law may have been passed the conditions of service can be validly regulated by the rules framed by the Governor of the State concerned in pursuance of the powers conferred by the proviso to Article 309 of the Constitution. In case of any conflict between the legislative enactment and the rules framed under the proviso to Article 309, the legislative enactment would prevail. As long as there is neither any legislative enactment nor any statutory rules framed by the Governor, the conditions of service and other matters relating to its employees can be regulated by the issuance of administrative instructions in exercise of the executive powers of the Government.

(Para 16)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice R. S. Narula, dated 29th April, 1968, in Civil Writ No. 121 of 1967.

D. N. AWASTHY AND BHUPINDER SINGH BINDRA, ADVOCATES, for the Petitioners.

M. R. SHARMA, DEPUTY ADVOCATE-GENERAL, Punjab.

H. L. SIBAL, M. R. AGNIHOTRI, AND R. C. SETIA, ADVOCATES, for the respondent No. 2.

JUDGMENT

SANDHAWALIA, J.—The primary question that falls for determination in this appeal under clause 10 of the Letters Patent, is, whether a direct appointment to the Selection Grade of the service is in consonance with the Punjab Civil Medical Service Class I (Recruitment and Conditions of Service) Rules, 1940.

(2) The facts which gave rise to the writ petition which stands dismissed by the order of the learned Single Judge under appeal deserve notice in some detail. Dr. Pritam Singh respondent No. 2 is a Fellow of the Royal College of Surgeons and has also attended and qualified in various Post Graduate Medical Courses at well-known hospitals in England and the United States of America. In the year 1961 he was serving the Government of Uganda in British East Africa and according to him (*vide* annexure 'O' to the written statement of this respondent) drawing about Rs. 3,000 per mensem in a permanent pensionable post with the privilege of private practice. A communication dated the 23rd of August, 1961, having reference to this respondent was addressed by Sir Cecil Wakeley, a renowned British Surgeon, to the then Prime Minister Shri Jawahar Lal Nehru. This was acknowledged by the Principal Private Secretary

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to the Prime Minister (*vide* annexure 'N' to the written statement of respondent No. 2) and it was stated therein that an offer to the post of Civil Surgeon in the Punjab Civil Medical Service had been made orally by the Chief Minister of Punjab in March, 1961, to respondent No. 2 but the latter had not given any definite reply and hence this offer had now been repeated and in case, respondent No. 2 was willing, the Punjab Government would certainly give him the post of a Civil Surgeon. This offer appears to have been repeated in a cablegram dated the 15th of September, 1961, and in reply thereto respondent No. 2 whilst referring to his present emoluments and his medical qualifications communicated his willingness to serve the country of his origin if he was offered the post of the Chief Medical Officer, Chandigarh, at a suitable salary. On 1st March, 1962, Shri Partap Singh Kairon the then Chief Minister of Punjab ordered that respondent No. 2 be appointed as Chief Medical Officer at Chandigarh in the vacancy caused by the transfer of Dr. Deepak Bhatia from that post. Consequently a formal order in the name of the Governor of Punjab dated 16th July, 1962, (annexure 'A' to the writ petition) was passed appointing respondent No. 2 as Chief Medical Officer, Chandigarh, in the scale of Rs. 800-50-1500 with a starting salary of Rs. 1,000 per mensem plus such allowances as may be admissible under the rules. This order specified that the appointment of Dr. Pritam Singh respondent No. 2 was for six months or till such time as a suitable candidate is recommended by the Punjab Public Service Commission to join the post. In compliance thereto respondent No. 2 joined his present post on and with effect from 4th August, 1962. Subsequently the age limit prescribed by rules was relaxed in favour of respondent No. 2 by an order of the Governor of Punjab dated the 18th December, 1962. This post, which is in a comparatively higher-scale of pay was directed by the Governor of Punjab in April, 1963, (*vide* annexure 'C') to be in addition to the existing posts of Civil Surgeon-both in Selection Grade and ordinary grade, and not in lieu of one of the posts of the selection grade of Civil Surgeons.

(3) At this stage reference may be made to the two appellants Dr. Harkishan Singh and Dr. Sham Singh Sekhon. Both of them hold the degree of M.B.B.S. and had War service to their credit. After the termination of the War they had joined the Punjab Civil Medical Service Class II and in due course had been promoted to the P.C.M.S. Class I. Dr. Harkishan Singh was confirmed in the class I service with effect from 26th February, 1955, whilst Dr. S. S. Sekhon was confirmed therein on 28th February, 1955.

(4) The Government initiated steps for filling the ex-cadre post of the Chief Medical Officer, Chandigarh, on a permanent basis through the Public Service Commission and a public notice inviting applications for the post was issued under the authority of the Commission in April, 1963, (annexure D). Dr. Pritam Singh respondent No. 2 was one of the applicants for the post along with others but both the appellants had not applied for the same presumably because it was specified that the candidates serving under the Union or State Government would not be entitled to any benefits of their past service under their respective Government and also because they did not meet the essential qualifications prescribed for the post in the said advertisement. Dr. Pritam Singh was selected on merit by the Punjab Public Service Commission out of the candidates who had applied for the post in question and his order of appointment by the Governor of Punjab on regular basis was issued on 10th May, 1963, (*vide* annexure 'E'). It was specified therein that he would be on probation for a period of two years with effect from the date on which he joined as Chief Medical Officer viz. 4th August, 1962, and further that he would be governed by the P.C.M.S., Class I, Rules as amended from time to time (hereinafter referred to as Class I, Rules 1940). It was further mentioned that the question of allowing a higher starting pay to Dr. Pritam Singh was under consideration and further communication in this connection would follow. A formal letter of appointment was issued to respondent No. 2, *vide* annexure 'F' dated the 30th of August, 1963 which further communicated that the Governor of Punjab in consultation with the Punjab Public Service Commission had allowed the grant of a higher starting pay of Rs. 1250, per mensem on his appointment as Chief Medical Officer on a regular basis in the time scale of Rs. 800-50-1500, with effect from the 17th April, 1963. A. D. O. letter dated 19th June, 1964, (annexure 'P' to the written statement of respondent No. 2), addressed by the Chief Minister of Punjab to Sir Cecil Wakeley which is absolutely in laudatory terms in reference to the quality of the work done by respondent No. 2 has also been placed on the record. Thereafter by an order dated the 9th of December, 1965, (annexure 'G' to the writ petition), respondent No. 2 was confirmed with effect from 17th April, 1963, as Principal Medical Officer, Chandigarh, that being the name of the redesignated post of the Chief Medical Officer. The Director of Health Services, Punjab, appears to have made some enquiries from the Punjab Government in his letter dated 13th November, 1965, regarding the character of the post held by respondent No. 2 and in reply to the same the Punjab Government wrote to the Director on

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16th April, 1966, (annexure 'H' to the petition), in the following terms :—

- “(i) The post of Principal Medical Officer, Chandigarh, is not to be treated as an ex-cadre post but it will be one of the P.C.M.S.I., posts;
- (ii) Exact place of seniority of Dr. Pritam Singh amongst the selection grade Chief Medical Officers will be intimated in due course;
- (iii) It has been decided to include the post of Principal Medical Officer, Chandigarh, in P.C.M.S.I., rules. Necessary draft amendment to the service Rules may please be sent to Government at an early date.”

Thereafter it appears that the Government communicated to the Director of Health Services regarding the inclusion of the post of Principal Medical Officer, Chandigarh, in P.C.M.S., Class I and further that respondent No. 2 was to be assigned a place in the seniority of P.C.M.S.I., amongst the selection grade Chief Medical Officers. The then Director of Health Services, however, opined that in his view there was no provision in the exist- in Class I, Rules authorising the filling of a selection grade directly by recruitment through the Public Service Commission and further that there was no provision in the said Rules that percentage of the selection grade posts was to be reserved for direct recruitment. He, therefore, suggested that it would be necessary to amend the rules if it was desired to provide for the filling of the selection grade post by direct recruitment through the Punjab Public Service Commission.

(5) As steps had been initiated for the encadrement of the ex-cadre post of the Principal Medical Officer, Chandigarh, and the suggestion had already been made that respondent No. 2, be given his seniority amongst the selection grade Chief Medical Officers, appellant No. 1, Dr. Harikrishan Singh reasonably became apprehensive of his interest being jeopardised and accordingly wrote a letter dated the 27th of May, 1966, (annexure 'J' to the writ petition). to the Secretary to Government of Punjab that he had been placed at No. 10 in the revised Joint Seniority List of P.C.M.S.I., Officers and this Seniority List is likely to be disturbed to his prejudice. Subsequently he made a formal representation to the Governor of

Punjab on the subject dated 10th August, 1966, (annexure 'K'). He based his claim primarily on rule 8 of the Class I, Rules, according to which seniority of the members of the service was to be determined from the date of their confirmation and pointed out that his date of confirmation was considerably prior to that of respondent No. 2, Dr. Pritam Singh who had been confirmed only with effect from 17th April, 1963. The further contention of this appellant was that the rules provided that the selection grade posts of Civil Surgeons should be filled by promotion only and that only from amongst the members already in service.

(6) There is no dispute about the fact that no relevant formal amendment of any of the Class I Rules has been made by the Punjab Government. However, *vide* annexure 'L' a communication from the Secretary to the Government, Punjab, dated the 20th of October, 1966, a reference was made to the sanction of the President of India which was accorded to the post of the Principal Medical Officer, Chandigarh, which was in the scale of Rs. 800-50-1500 to be treated as one of the posts of P.C.M.S. I in the scale of Rs. 1300-50-1600 with effect from the date of issue of this sanction. It was further mentioned that this would not be personal to Dr. Pritam Singh, the present incumbent of the post of Principal Medical Officer and he would be liable to be transferred to any other place in the State like other P.C.M.S. I Officers. After sanctioning the additional selection grade post in P.C.M.S. I, the President of India in the same communication proceeded to appoint respondent No. 2 Dr. Pritam Singh in the selection grade of P.C.M.S. I in the scale of Rs. 1300-50-1600 with effect from the 20th of October, 1966, that is, with effect from the date of the sanction.

(7) The proposal to encadre the post of Principal Medical Officer, Chandigarh, of which respondent No. 2 was the incumbent and his subsequent direct appointment to the selection grade engendered a number of representations from some members of the P.C.M.S. Class I Service. On a consideration of these the Government in a communication in October, 1966, informed the Director of Health Services (annexure M) that the said representations had been considered along with the comments and it has been found that the seniority of the officers concerned which had already been fixed was more or less correct with the exception of some changes here and there. The decision about the seniority of 4 officers belonging to the service was kept pending whilst to this communication was attached an attested copy of the Joint Seniority List framed by the Government. In this list Dr. Pritam Singh, respondent No. 2,

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is shown at serial No. 9 whilst the two appellants Dr. Harkishan Singh and Dr. S. S. Sekhon were shown below him in the order of seniority at Nos. 11 and 13. The admitted situation which emerges from the pleadings was that respondent No. 2 on his encadrement and appointment to the selection grade was fitted in the seniority list at the bottom of the selection grade Chief Medical Officers. This in effect placed him as senior to the officers who were the senior-most time-scale Chief Medical Officers which category included both the appellants. These two orders, therefore—annexure 'L' and 'M' were the primary subject of attack against which the writ petition of the two appellants was directed seeking the quashing of the same. It deserves notice, however, that each of the two appellants was also promoted to the selection grade in P.C.M.S. I with effect from 1st November, 1966, that is, only 10 days after the grant of the same to respondent No. 2 (*vide* annexure 'P' to the writ petition).

(8) Mr. D. N. Awasthy, the learned counsel for the appellants has reiterated before us two main contentions which he had also earlier pressed before the learned Single Judge. Firstly it has been argued with vehemence that the appointment of the second respondent Dr. Pritam Singh directly to the selection grade of the service *vide* annexures 'L' and 'O' was contrary both to the letter and the spirit of the P.C.M.S. I Rules. In the words of Mr. Awasthy the members of the service, and the service only are eligible to the selection grade and no direct appointment to such a grade is envisaged by the Rules. Reliance for this submission was placed on the provisions of the rules 9(2) and 5.

(9) To appreciate the rival contentions it is necessary to advert to the provisions of Class I Rules. These were framed by the Governor of Punjab in exercise of his powers under clause (b) of sub-sections (1) and (2) of section 241 of the Government of India Act, 1935 corresponding to the proviso to Article 309 of the Constitution of India. The relevant rules on which reliance has been placed by the parties are in the following terms :—

- (1) These rules may be called the Punjab Civil Medical Service, Class I (Recruitment and Conditions of Service) Rules, 1940;
- (2) In these rules unless there is anything repugnant in the subject or the context—

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(b) * * * * *

(c) 'the service' means the Punjab Civil Medical Service, Class I,

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- (5) Appointment to the service shall be made either by promotion from the Class II service or by direct recruitment in India or in England, and when any vacancy occurs or is about to occur, Government shall determine in what manner such vacancy shall be filled.

Note : Except with the previous sanction of Government only such persons shall be eligible for direct appointment as are not already in Government service.

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9. (1) A member of the Service shall on appointment be entitled to a pay on a scale raising from Rs. 600 a month by an annual increment of Rs. 40 a month to Rs. 800 a month and then by an annual increment of Rs. 50 a month to Rs. 900 a month with an efficiency bar at Rs. 800 a month. In addition a member if he is of non-Asiatic domicile shall be entitled to receive such overseas pay as may be prescribed by Government from time to time ;

(2) Members of the Service shall be eligible for promotion in a selection grade and on such promotion shall be entitled to a pay of Rs. 1,000 a month :

Provided that promotion to the selection grade shall be made strictly by selection and no member of the Service shall be entitled as of right to such promotion.

(3) The number of appointments in the selection grade shall not exceed 25 per cent of the total number of appointments in the Service.

The primary contention of Mr. Awasthy based specifically on rule 9(2) above is that a person can be appointed to the selection grade by promotion and promotion alone from amongst the pre-existing

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members of the service. Any direct appointment to the selection grade, according to him, is violative of the provisions of rule 9(2). We are unable to agree. The basic fallacy in this argument is that such a construction would imply reading the word "only" before the expression "members of the Service" in rule 9(2). To import this word "only" into the rule when in fact it does not so exist would be doing violence to its language and we find no warrant for such a proposition. In our view rule 9(2) is an enabling provision making the members of the service also eligible for the selection grade of pay under the provisions of rule 9. It is neither exhaustive nor it can be read by implication to exclude the eligibility of a fit and deserving person for being considered directly for appointment to the selection grade. To construe rule 9(2) as exclusionary would be straining without any justification the plain meaning of its words.

(10) Yet again a clue to the true meaning which is to be attributed to rule 9 also appears when it is read in conjunction with rule 5. This rule expressly provides for appointment to the service—"by direct recruitment in India or in England". The word "Service" in the light of the definition in section 2(c) must necessarily include the time-scale as well as the selection grade in the service. Clearly this term is comprehensive. It has not even been contended before us that "service" means time-scale only. That being so rule 5 clearly visualises an appointment directly to the time-scale as well as the selection grade.

(11) If appointment to the service is expressly provided for by direct recruitment we fail to see why there should exist a bar to an outsider being appointed directly to the selection grade of the service as well.

(12) We wish to refer also to rule 9(3) the provisions of which tend to run counter to the contention of Mr. Awasthy. A close reading thereof indicates that recruitment to the selection grade is by "appointment". Such appointment to the service by rule 5 is permitted by both direct recruitment as well as by promotion. As the rule indicates appointment to this grade is by a process of selection and the members of the service also are not entitled as of right to appointment to this grade. Selection, therefore, would obviously include selection by either mode, that is from the pre-existing members of the service as also by selection through the Public Service Commission from outsiders as provided for in rule 3 which lays down that an appointment to the service shall be made

by Government on the advice of the Commission from time to time as required. If this were not so, selection grade posts would have to be kept vacant if no one in the time-scale is outstanding or deserving to be promoted to these posts. It is noticeable that rule 9(3) provides that the proportion for the selection grade posts is not to exceed 25 per cent of the total number of appointments in the service. Yet again if the contention of Mr. Awasthy were to succeed and a bar of direct recruitment to the selection grade is accepted the Government would be precluded from attracting a person of however outstanding ability and merit by an offer of appointment directly to the selection grade. We are unable to agree to a construction which would lead to such an anomalous result. In the ultimate analysis, therefore, we are of the view that the argument of Mr. Awasthy that only pre-existing members of the service alone can be appointed to any of the selection grade posts in class I service is fallacious. We decline to construe by implication any prohibition to such direct appointment in the rules when none such exists in the express words thereof.

(13) We proceed now to consider the second contention of Mr. D. N. Awasthy, that even if respondent No. 2 Dr. Pritam Singh could be appointed directly to the selection grade of the service, nevertheless his seniority would be below that of the two appellants. In consequence of this argument, annexure 'M' showing the seniority of respondent No. 2 at No. 9 whilst that of the appellants appear below him at Nos. 11 and 13 has been assailed. Reliance has been placed on rule 8 for the argument that as the date of the confirmation of the two appellants is prior to the date of confirmation of respondent No. 2 in the ex-cadre post previously held by him, they are entitled to be placed higher in seniority to respondent No. 2.

(14) This submission of the learned counsel for the appellants loses much of its validity in view of our above finding that the direct appointment of respondent No. 2 to the selection grade was in consonance with the rules. Once it is so held it is *prima facie* incongruous to hold that the incumbent of the selection grade in the service should rank junior in seniority to those in the ordinary time-scale. It is to be first borne in mind that the second respondent on his appointment directly to the selection grade in the service was fixed for the purposes of seniority at the bottom of the then existing incumbents of such posts in the service. Admittedly direct appointment to the selection grade is an exceptional power with the Government and there existed an absence of precedent

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regarding the case of respondent No. 2. A somewhat peculiar situation thus arose which was not of common occurrence and regarding which no definite rules or clear executive instructions had been framed. On a close examination of the Class I rules we find that none of them governs and specifically deals with the matter of adjusting the seniority of a direct appointee to the selection grade and the rules are absolutely silent in this connection. There is thus an obvious lacuna in the rules in so far as there exist no provisions in them and hence resort had obviously to be made to executive instructions. Admittedly the salary and scale enjoyed by respondent No. 2 Dr. Pritam Singh before his direct appointment and encadrement into the service was much higher than the highest salary which any time-scale incumbent of the service was in receipt. It was in this context that a special order was made by the Governor of the Punjab in regard to the fitting in of Dr. Pritam Singh at a particular place in the tentative seniority list of the P.C.M.S. Class I and hardly any fault can be found on merits in such fixation of seniority. We are wholly in agreement with the learned Single Judge when he held that—

“To expect the Government to have fitted respondent No. 2 amongst the time-scale personnel of P.C.M.S. I in such a situation would have been to look for sheer injustice.”

(15) The argument that even though there was no express provision in the rules for the fixation of the seniority of a direct appointee to the selection grade (and there existed an obvious lacuna) nevertheless the Government cannot fix such seniority in exercise of its executive power is hardly tenable.

(16) A close analysis of the various authorities which have been cited at the bar, to which we deem it unnecessary to refer in detail, shows that the accepted position is that it is within the competence of the State Legislature to enact laws governing the conditions of the service of its employees. However, till the enactment of such a law and in so far as no law may have been passed the conditions of service can be validly regulated by the rules framed by the Governor of the State concerned in pursuance of the powers conferred by the proviso to Article 309 of the Constitution. In case of any conflict between the legislative enactment and the rules framed under the proviso to Article 309, the legislative enactment would prevail. As long as there is neither any legislative enactment nor any statutory rules framed by the Governor, the

conditions of service and other matters relating to its employees can be regulated by the issuance of administrative instructions in exercise of the executive powers of the Government. In the case before us we have found that the Class I Rules are wholly silent regarding the adjustment of an ex-cadre post in the service on its encadrement within the P.C.M.S. Class I. There thus exists an absence of any legislative enactment or a statutory rule. In such a situation a special order made by the Governor in exercise of his executive power for affixing the seniority of Dr. Pritam Singh, respondent No. 2, would thus be wholly competent. As early as 1955 in the case of *Ram Jawaya Kapur and others v. The State of Punjab* (1), the learned Judges of the Supreme Court whilst construing Article 162 observed as follows :—

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament.

and further

On the other hand the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislative is competent to legislate and are not confined to matters over which legislation has been passed already.”

(17) This view has been reaffirmed in *B. N. Nagarajan and others v. State of Mysore and others* (2), in the particular context of the executive powers of the State in respect of appointments to the State Public Services and the regulations of their terms of employment. It has been observed therein as follows :—

“Secondly, the State Government has executive powers, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in *Ram Jawaya Kapur v. State of Punjab* (1), that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution

(1) A.I.R. 1955 S.C. 549.

(2) A.I.R. 1966 S.C. 1942.

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which abridges the power of the executive to act under Article 162 of the Constitution without a law."

(18) In view of the above enunciation of the law, the second contention of Mr. Awasthy must necessarily fail.

(19) A subsidiary argument of the learned counsel for the appellants on the point of seniority was that so far as the fixation of the seniority of Dr. Pritam Singh above that of the appellants was concerned the appellants were entitled to be heard and to be afforded a reasonable opportunity in case their previous seniority was likely to be disturbed to their prejudice. This submission was based on annexure 'M' which affixes the seniority of the second respondent at No. 9 whilst those of the two appellants was at Nos. 11 and 13 respectively. It deserves mention that in the written statement filed by the State the clear position taken up was that the question of inter-se seniority between the appellants on the one hand and respondent No. 2 on the other had not been finally decided by the Government. In paragraph 13 of the written statement it was stated as follows in connection with annexure 'M' :—

"With regard to the unsigned letter the same was despatched through an oversight. The seniority list appended to the aforesaid unsigned letter has been returned by the Director of Health Services Punjab, for authenticity. The matter is still engaging attention in the wake of the reorganisation of the State of Punjab and final decision will be taken in due Course."

(20) Mr. Awasthy had stated before us that the fixation of seniority has now been finalised and even in this finalisation respondent No. 2 figures at a higher position than the two appellants in the seniority list. With commendable fairness Mr. Awasthy has produced the Government letter issued by the Director of Health Services to all P.C.M.S. I Officers in the Health Department dated the 20th December, 1968, regarding the finalisation of the joint integrated seniority list of P.C.M.S. I (Men, Women and Public Health Class I Officers). We have allowed this document to be placed on the present record. This seniority list in view of certain retirements in the service and the reorganisation of the State now shows the position of respondent No. 2 at serial No. 5 whilst Dr. Harkishan Singh appellant is shown at No. 7 and Dr. S. S. Sekhon appellant at No. 8.

The covering letter to this seniority list furnishes in our view, a complete answer to the contention raised by Mr. Awasthy. It states in the following terms :—

“Government have taken into consideration all the representations of the doctors on the matter of fixation of their seniority on integration of the cadre of P.C.M.S. I (Men, women and Public Health Class I Officers) with effect from 15th July, 1964 and have finally approved the integrated seniority list, a copy of which is enclosed for your information.

The names of the officers who retired before 1st November, 1966 and of those allocated to Haryana and Himachal Pradesh have been deleted from the list.

2. However, the list in question will be subject to any change ordered by any Court of law or otherwise considered necessary at any time.”

It is the admitted case of the appellants that they had made representation in connection with the fixation of the seniority. The above letter clearly shows that all these have been duly taken into consideration for the purpose of the fixation of the seniority. It is thus patent that the appellants have been given ample and reasonable opportunity of showing cause against any supposed grievance which they might have had regarding the matter of seniority. If on a consideration of all these the Government have arrived at a decision, the appellants can now have no grouse whatsoever on that score.

(21) In the result, therefore, this appeal fails and is dismissed, however, we make no order as to costs.

HARBANS SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BISHAN KAUR,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1123 of 1964

August 19, 1969.

Punjab Gram Panchayat Act (IV of 1953)—Sections 6 and 13-A(e)—Co-option of a woman Panch—Whether amounts to election—Such co-option—Whether to be set aside by an election petition—Order removing a co-opted